

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

THE KROGER CO.

CASE NO. C-1-02-439

Plaintiff

vs

MALEASE FOODS CORP., formerly
known as MALESE FOODS CORP.

Defendant

Judge Beckwith
Mag. Judge Sherman

**MOTION TO EXCUSE LAWRENCE
KADISH FROM ATTENDANCE AT
FINAL PRETRIAL CONFERENCE**

For the reasons set forth herein, defendant moves the Court to excuse Lawrence Kadish from personal attendance at the Final Pretrial Conference of this matter on February 25, 2005.

Respectfully submitted,

/s/ R. Gary Winters
R. Gary Winters 0018680
Attorney for Defendant
McCASLIN, IMBUS & McCASLIN
Suite 900 Provident Building
632 Vine Street
Cincinnati, Ohio 45202-2442
Telephone No.: 513-421-4646
Telefax No.: 513-421-7929
Email: rgwinters@mimlaw.com

OF COUNSEL:

Robert W. Cinque, Esq.
CINQUE & CINQUE, P. C.
845 Third Avenue, Suite 1400
New York, New York 10022
Telephone No.: 212-759-5515
Telefax No.: 212-759-7737
Email: CINQUE845@aol.com

MEMORANDUM

Lawrence Kadish, owner of Malease Foods Corp. was recently taken ill and hospitalized while visiting in Israel. Mr. Kadish has now returned to United States, but his doctors have advised against further travel until he has more fully recovered from his illness. Defense counsel fear that his recovery will not be sufficiently advanced by Friday, February 25, 2005, and request that Mr. Kadish be permitted to participate in the Pretrial Conference by telephone. Should the Court wish to have a letter from Mr. Kadish's physician regarding his condition and the limitations imposed upon him, counsel will be happy to provide it.

Respectfully submitted,

/s/ R. Gary Winters
R. Gary Winters 0018680
Attorney for Defendant
McCASLIN, IMBUS & McCASLIN
Suite 900 Provident Building
632 Vine Street
Cincinnati, Ohio 45202-2442
Telephone No.: 513-421-4646
Telefax No.: 513-421-7929
Email: rgwinters@mimlaw.com

OF COUNSEL:

Robert W. Cinque, Esq.
CINQUE & CINQUE, P. C.
845 Third Avenue, Suite 1400
New York, New York 10022
Telephone No.: 212-759-5515
Telefax No.: 212-759-7737
Email: CINQUE845@aol.com

CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of February, 2005, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/ R. Gary Winters
R. Gary Winters 0018680
Attorney for Defendants
Suite 900 Provident Building
632 Vine Street
Cincinnati, OH 45202-2442
Telephone No.: 513-421-4646
Telefax No.: 513-421-7929
Email: rgwinters@mimlaw.com